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Report on the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, with the mandate of elaborating an international legally binding instrument*,**

Chair-Rapporteur: María Fernanda Espinosa

Summary

The Human Rights Council, in its resolution 26/9, decided to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, and mandated the working group to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. In the resolution, the Council affirmed the importance of providing the working group with independent expertise and expert advice in order for it to fulfil its mandate.

In accordance with the resolution, the Chair-Rapporteur of the working group presents to the Council the present report in follow-up to the first session of the working group, held from 6 to 10 July 2015 and dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument. The report includes a reflection of the inputs provided by States parties and other stakeholders and the progress of the working group.

* The present report was submitted after the administrative deadline as a result of consultations by the Chair-Rapporteur with Member States and other stakeholders, and in the light of revisions made in order to more accurately reflect their inputs.

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I. Introduction

1. The open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights was established by the Human Rights Council in its resolution 26/9 of 26 June 2014, and mandated to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. In the resolution, the Council decided that the first two sessions of the working group should be dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument, and that its first session should be held for five working days in 2015, before the thirtieth session of the Council, and that its first meeting should serve to collect inputs, including written inputs, from States and relevant stakeholders. Moreover, the Council affirmed the importance of providing the working group with independent expertise and expert advice, requested the United Nations High Commissioner for Human Rights to provide the working group with all the assistance necessary for the effective fulfilment of its mandate, and requested the working group to submit to it a report on progress made.

2. According to the annual programme of work of the Human Rights Council, it was decided that the working group would meet from 6 to 10 July 2015.

3. The first session was opened by the Deputy High Commissioner for Human Rights, on behalf of the Secretary-General.[1] The Deputy High Commissioner opened by introducing a video message by the United Nations High Commissioner for Human Rights, in which he highlighted that, since the introduction of the Universal Declaration of Human Rights, international human rights law had been evolving with the increasing awareness that non-State actors have a responsibility to ensure accountability and access to remedies when rights have been abused. Furthermore, he noted that the adoption of the Guiding Principles on Business and Human Rights was an important step; he welcomed the intergovernmental process as a complementary step, and stressed that there was no conflict between advocating for both measures as a means to enhance protection and accountability in the business context. Finally, he urged all member States to work in a constructive spirit in order to further advance human rights. The Deputy High Commissioner welcomed all the participants and noted that their inputs would be essential to the future protection of human rights. She also expressed the readiness of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to assist the working group in all its endeavours.

4. As keynote speaker, the Special Rapporteur on the rights of indigenous peoples noted that an international legally binding instrument on transnational corporations and other business enterprises and human rights could contribute to redressing gaps and imbalances in the international legal order that undermine human rights, and could address the lack of remedy procedures for victims of corporate human right abuses. In that regard, the Special Rapporteur highlighted that, for several decades, indigenous peoples have been victims of serious human rights violations by the actions or omissions of transnational corporations and other business enterprises. Furthermore, the Special Rapporteur underscored that the Guiding Principles should continue to be used as an interim framework while developing the platform for advancing the prevention and remedy of corporate-

[1] A webcast of the entire first session of the working group is available from http://webtv.un.org/search/1st-meeting-1st-session-of-open-ended-intergovernmental-working-group-on-transnational-corporations/4339866849001?term=business&languages=&sort=date.

related human rights abuses. Likewise, she stressed that a binding instrument was one step further towards strengthening the primacy of human rights in the context of business activities. Therefore, the creation of a legally binding instrument was of paramount importance.

II. Organization of the session

A. Election of the Chair-Rapporteur

5. At its first meeting, on 6 July 2015, the working group elected María Fernanda Espinosa Garcés, Permanent Representative of Ecuador, as its Chair-Rapporteur by acclamation after her nomination by the representative of Guatemala on behalf of the Group of Latin American and Caribbean States.

B. Attendance

6. Representatives of the following States Members of the United Nations attended the meetings of the working group: Algeria, Argentina, Austria, Bangladesh, Bolivia (Plurinational State of), Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Ghana, Greece, Guatemala, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Kenya, Kuwait, Latvia, Libya, Liechtenstein, Luxembourg, Malaysia, Mexico, the Republic of Korea, the Republic of Moldova, Monaco, Morocco, Myanmar, Nicaragua, Namibia, the Netherlands, Pakistan, Peru, the Philippines, Qatar, the Russian Federation, Singapore, South Africa, Switzerland, the Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Ukraine, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam.

7. The European Union participated in the meetings held on 6 July and on the morning of 7 July. France stayed during the whole session.

8. The following non-member States were represented by observers: the Holy See and the State of Palestine.

9. The following intergovernmental organizations were represented: the Organization for Economic Cooperation and Development, the Council of Europe, the United Nations Entity for Gender Equality and the Empowerment of Women, the United Nations Children's Fund, the International Labour Organization (ILO), the United Nations Conference on Trade and Development (UNCTAD) and the South Centre.

10. Non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were also represented (see Annex III).

C. Documentation

11. The working group had before it the following documents:

(a) Resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights;

(b) The provisional agenda of the working group (A/HRC/WG.16/1/1);

(c) Other documents — including a concept note, a list of panellists and their curricula vitae, a list of participants, contributions from States and other relevant stakeholders — were made available to the working group through its website.[2]

D. Adoption of the agenda and programme of work

12. In her opening statement, the Chair-Rapporteur thanked all the members of the working group for her nomination as Chair-Rapporteur and welcomed the encouraging remarks towards the working group. She also noted that, after the adoption of the programme of work, there would be an opportunity to make general statements. She also noted that there would then be a number of panel discussions, each of which would be on a thematic issue, according to the proposed programme of work. She further noted that, after each discussion, there would be an opportunity for comments from political and regional groups, States, intergovernmental organizations, national human rights institutions and civil society. Participants were invited to share their views on the theme of the discussion and ask panellists questions on their specific area of expertise. The Chair-Rapporteur informed the participants that the final report would include summaries of the debate, summaries of the discussions and recommendations by the working group. The Chair-Rapporteur noted that, before the session, she had conducted intensive consultations with delegations, regional and political groups and informal bilateral meetings, and that she looked forward to a fruitful discussion, based on the various views of the participants. The Chair-Rapporteur also noted that the programme of work had been presented with enough time and further bolstered by contributions of States in a way that did not affect the mandate or preclude the basis for consensus. The Chair-Rapporteur underlined the basic principles for conducting the session of the working group, namely, transparency, inclusiveness and democracy.

13. The Chair-Rapporteur asked if there were any comments on the programme of work. The European Union noted that, in its resolution 26/22, the Human Rights Council had provided a solid and robust work plan. While recalling its position regarding resolution 26/9, the European Union presented two proposals on the draft to the programme of work when it had been first circulated on 12 June 2015. First, to add a first panel discussion entitled "Implementation of the Guiding Principles on Business and Human Rights – a renewed commitment by all States" as a way to reiterate the commitment to implement the principles. Second, to add the word "all" before the words "business enterprises" throughout the programme of work, but without changing the title, in line with resolution 26/9. The latter proposal was made because the European Union considered that the discussion could not be limited to transnational corporations as many abuses were committed by enterprises at the domestic level. Those proposals were supported by two delegations.

14. Several delegations noted their concern with regard to the suggested substantive proposed changes by the European Union, because they considered that it amounted to amending resolution 26/9 and went further than the mandate of the working group. They affirmed that they were ready to adopt the programme of work as it had been proposed by the Chair-Rapporteur. A number of delegations also argued that resolution 26/9 was clear, did not need further clarification and did not apply to national companies. They also highlighted that paragraphs 1, 3 and 5 of the resolution clearly defined the scope and nature of the discussions and that it would be inappropriate to amend the programme of work to say "all" because it was not featured in the mandate. A number of delegations noted that

[2] www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx.

they did not see any contradiction between the Guiding Principles on Business and Human Rights and resolution 26/9, and that, although they believed the principles could be discussed throughout the working group session, they were willing to support the proposal of an extra panel discussion on the principles in the spirit of consensus–building, but did not support the second proposal to include the word "all" before "business enterprises" throughout the programme of work.

15. The Chair-Rapporteur, having heard the suggestions and concerns of various Member States, decided that there should be a break in the session so that informal consultations could take place in order to find a consensus and to allow for the adoption of the programme of work.

16. The Chair-Rapporteur reopened the meeting and, based on the different views heard during the informal consultations and in the spirit of finding consensus, reported on the discussions held during the break. Likewise, the European Union shared with the plenary one proposal to include a footnote in the programme of work instead of including the word "all". The footnote would read: "This programme of work does not limit the scope of this working group, taking into consideration several calls for the discussion to cover transnational corporations as well as all other business enterprises". The European Union recalled that it was not its proposal but that it could accept it so that the programme of work could be adopted without delay. A number of delegations expressed their views regarding the proposals.

17. Taking into account the opinions and comments expressed in the plenary, the Chair-Rapporteur presented a revised version of the programme of work, including an additional first panel discussion with the participation of the Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Michael Addo, but without the inclusion of the second amendment, given the lack of support from the floor to include the word "all" before the words "other business", or to include a footnote to the programme of work.

18. The Chair-Rapporteur proposed that the first panel discussion on the Guiding Principles on Business and Human Rights take place immediately, followed by the next discussion, thereby leaving time for general statements.

19. In subsequent remarks, the European Union appreciated the addition of a panel discussion in the programme of work, but noted that it was unfortunate that the issue of the scope of the discussion had not been resolved. The European Union nevertheless did not block the adoption of the programme of work, and invited consultations on the next steps to start in an inclusive and transparent manner as soon as the session ended.

20. The Chair-Rapporteur then read through the revised programme of work and asked for comments for its adoption; as there where none, she declared it adopted. Then, the Chairperson-Rapporteur thanked the members of the working group and asked the Secretariat to share the adopted version.

III. General statements

21. During the session, and throughout the panel discussions, the floor was open for general statements, the Chair-Rapporteur having reiterated her intention for the working group to proceed in a transparent, inclusive, consensual and objective manner.

22. A number of delegations, including one speaking on behalf of the Group of African States, noted that they were pleased to take part in the working group and voiced their positive support for the process, particularly in the context of the progressive development of international human rights law. They also noted that, while there were many economic

benefits from the activities of transnational corporations, there were human rights protection gaps that could not be compensated by mere financial benefits. It was also highlighted by a number of States that there could be large asymmetric power dynamics between such corporations that need to be balanced. They also argued that it was appropriate to find remedies and solutions for victims of human rights violations, which must be the main concern during a treaty process.

23. A number of delegations noted that the Guiding Principles on Business and Human Rights did not get to the core of the discussion on maximum protection of human rights and access to remedies, and that a complementary international instrument was needed in order to strengthen national capabilities to ensure human rights protection in the domestic sphere. It was also highlighted by one delegation that transnational corporations and other business enterprises must conform to the values and principles of the United Nations. Several delegations reaffirmed that the principles of universality, indivisibility, participation, accountability and transparency should be applied. One delegation noted that many advances had been made in the area of business and human rights and that a new instrument would be a logical extension of that work. Another delegation considered that the priority was the implementation of the Guiding Principles rather than the development of a new international instrument.

24. Some delegations noted that it was their hope that a future legally binding instrument would include a reference to environmental principles, inherent dignity, freedom, justice, peace, respect for all rights, the universal indivisible nature of human rights, use of the best technology, polluter-pay principles, relevant intellectual property rights, free prior informed consent, subsidiarity, burden of proof and a number of principles to be found in relevant international instruments. They highlighted that the interdependence and indivisibility of human rights should be recognized and stressed the importance of the duty of the individual to defend human rights. The importance of taking an incremental, inclusive and comprehensive approach in line with resolution 26/9 was also highlighted.

25. Through a video statement, one NGO noted that the process for developing a binding instrument should be transparent, inclusive and participatory for all stakeholders, ensuring broad representation of rights holders with particular emphasis on marginalized groups and affected communities. It also suggested broadening the discussion to include not only transnational corporations but equally a broad range of business enterprises operating domestically.

26. One delegation believed that the elaboration of a legally binding instrument on transnational corporations and human rights was premature and not urgent. Likewise, it noted the need for the instrument to be studied in depth and discussed in the broadest possible way, taking into consideration all stakeholders, those against and those in favour. Finally, it stressed that discussions on this instrument should be based on a gradual development of the Guiding Principles.

27. A number of intergovernmental organizations noted that there was keen interest in the outcomes of the working group. One intergovernmental organization noted that any future instrument should include considerations of existing national and international guidelines and stressed the importance of a multi-stakeholder approach. One NGO highlighted that a normative hierarchy of international law should be central to a new treaty. Another NGO noted that current legal frameworks were inadequate to deal with the impacts of transnational corporations and that trickle-down development had been widely discredited but was still being promoted by such corporations, often in collaboration with States.

28. Most NGOs called upon States and political groups to actively and constructively participate in good faith. They also highlighted that a treaty was a unique opportunity to

empower local communities to take charge of their own development. They argued that communities must be able to participate in the working group, and that feedback was needed at each stage of the drafting process

29. Several delegations noted that the Guiding Principles were complementary and not in contradiction to a legally binding instrument, and that adoption of such an instrument could help to protect the most vulnerable. Some NGOs underlined that the principles were based on self-regulation and that such an approach was illusory, as shown by the recent economic and financial crisis. It was also noted that a treaty should focus on the indivisibility and universality of human rights and therefore should have an extraterritorial scope. Most NGOs argued that a legally binding treaty should provide for companies to be held liable.

30. Many NGOs noted that the conduct of all business enterprises should be regulated, while also noting that a treaty should provide specific measures to address the particular challenges of transnational corporations, without imposing a one-size-fits-all approach. Another NGO stressed the potential for a hybrid approach for a treaty, covering all enterprises while focusing in particular on addressing the specific challenges of transnational corporations. Other NGOs stressed that this was a historic opportunity to address impunity for corporate-related human rights abuses in international human rights law. It was noted that, while transnational corporations benefited from strong enforcement mechanisms, such as investor-to-State arbitration tribunals in international investment treaties, no international mechanism existed to ensure access to justice for the victims of those abuses. The need to redress this asymmetry in international law was highlighted.

31. Most NGOs voiced concerns about the scope of a treaty being limited to gross human rights violations, as they would not cover most corporate human rights abuses. Likewise, they stressed that the objective of the instrument should be to prevent and remedy violations before they became gross abuses.

32. Some NGOs pointed out the need to cover all rights, particularly the right to food and nutrition. They also noted that evictions, the depletion of fish stocks and forests, harm to health and the destruction of food, crops, animals and seeds had an impact on the right to self-determination and ability to achieve an adequate standard of living. One NGO noted that the protection of indigenous territories should be taken into account in relation to their right to subsistence.

33. Some NGOs noted that a treaty needed to protect workers' rights and that a legally binding instrument should clearly outline the duty to ensure their rights to a safe and healthy working environment, and that it should strengthen the work of ILO.

34. A number of NGOs noted that a gender-sensitive approach should be adopted throughout the process, as women were particularly affected by working longer hours and receiving lower salaries, and were often subjected to domestic abuse and gender-based violence.

35. Some NGOs highlighted that the use of obsolete technologies and bad environmental practices had caused environmental damages that had affected individuals' human rights to food security, life and health. They also highlighted that the use of pesticides by transnational corporations had short- and long-term detrimental effects on the environment and the quality of life of local communities and populations.

36. Several NGOs stressed the need to protect the negotiation process from corporate capture and ensure an effective participation of victims and affected communities.

IV. Panel discussion

A. Panel I. Implementation of the Guiding Principles on Business and Human Rights: a renewed commitment by all States

37. The Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises noted that its work could contribute to the open-ended intergovernmental working group in providing remedies for corporate human rights abuses.

38. The panellist noted that a legally binding instrument may help to advance and strengthen human rights and to reaffirm the call for States to implement national action plans to address business and human rights. He also noted that, in its resolution 26/22, the Human Rights Council had invited the OHCHR to explore legal options for victims of human rights abuses, and that this had led to an accountability and remedy project.

39. Finally, the panellist highlighted the need to create inter-State cooperation and capacity-building as a way to carry the process forward, considering victims as the centre of the process. The European Union reiterated its commitment to concentrate on genuine and effective means to prevent and remedy abuses, to continue working with States across regions to effectively implement the Guiding Principles, to continue to work for the protection of human rights defenders and civil society actors facing risks for their involvement in this sensitive area of work and to continue to encourage European companies to implement the principles wherever they operate. After this intervention, the European Union did not participate in the rest of the session. Several participants considered the importance of taking into account the principles and their role as reference point for the process of an international legally binding instrument, by emphasizing that there was no contradiction among them as they were mutually complementary. Moreover, some of the participants reiterated their engagement for their application and highlighted their efforts to design and implement initiatives in this regard.

B. Panel II. Principles for an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights

40. One panellist explained that there were ways in which States and intergovernmental organizations could change the rules of the game by having policies that deter and refuse companies with bad human rights records.

41. Another panellist noted that businesses were not opposed to regulation but wanted smart regulation and that, although there needed to be a balance between human rights and attracting foreign investment, there was a need for shoring-up soft law with hard law. The panellist noted that there was a range of common-sense principles that could be adopted for the development of a legally binding instrument — such as being progressive not regressive, being fact and evidence-based, being realistic and feasible, aiming at capacity-building to contribute to a change in businesses' behaviour, being universal in nature, being transparent and inclusive, having good governance principles and being victim-orientated.

42. One panellist noted the importance of continuing to develop international human rights law and highlighted that some international legally binding instruments were first opposed but eventually an important support was reached because of specific needs as part of the development of international law principles.

43. One panellist noted that that limiting the scope of a treaty simply to cover certain human rights would run counter to the principles of human rights and international law. Moreover, the panellist noted that international financial institutions, such as the International Monetary Fund and the World Bank, could also be covered by the scope of the instrument and that it would be consistent with international law. The panellist noted that all States had obligations to provide remedies for victims, in particular vulnerable people.

44. Another expert noted that all entities yielding power should be covered by the binding instrument, but explained that it was not a question of size but of the impact that their activities have upon human rights. Another panellist agreed that, while businesses could violate human rights, a treaty should consider the activities of corporations and that it should strongly focus on transnational corporations.

45. One panellist noted the positive impacts that investments can have if done appropriately and that human rights must be considered part of the development and not to be seen as in opposition to it.

46. Some delegations emphasized that, owing to the principles of universality, indivisibility and interdependence, all human rights should be included in a future instrument. Likewise, some panellists stressed that the process must strengthen the universality of human rights. Some panellists noted that an international binding instrument would benefit businesses as it would provide a set of minimum international standards for all transnational corporations, levelling the international playing field of their operations.

47. Furthermore, a number of participants considered that the instrument should include the principle of direct responsibility of transnational corporations. It was also stated that the right to legal defence and effective redress should be included as fundamental rights.

48. The panellists agreed that an international binding instrument should not backslide from what had been achieved in the Guiding Principles, and that it should be of common interest, particularly for the victims.

49. The panellists observed that the adoption of national action plans could serve as a tool for States to adapt their domestic legislation to the future legally binding instrument, and that national action plans should therefore be encouraged. One panellist considered that the instrument must set out the obligations of States with respect to corporations' conduct. Another panellist argued that the instrument should integrate the principles of capacity-building, transparency and good governance.

50. Several States considered that Guiding Principles were a starting point and a reference for the work of the working group. Some States commented that long-term investments of transnational corporations could contribute to poverty alleviation and development, and that the instrument should encourage appropriate and human rights responsible corporate investments. One State noted that the current approach on corporate social responsibility did not have legal weight and therefore could not be upheld for the protection of human rights in front of a court. In addition, it noted that national action plans were neither integrated nor uniform, and that companies could jump from one jurisdiction to another.

51. Some States stressed that an international legally binding instrument should consolidate the current norms in international law, and one State considered that some principles could also be brought from other fields of law, for example, the reversal of the burden of proof, polluter-pays rules and the precautionary principle. Likewise, one delegation observed that such instrument must also consider the specificities of each country, including its legal system, social norms, traditions, culture, history and stage of development.

52. One delegation asked whether it would be appropriate to include a reference to the primacy of human rights over international investment instruments. Some of the panellists noted that it was necessary to clarify the hierarchy between investment treaties and human rights treaties, and that interpretation of human rights should dictate the terms under which the investment instruments are adopted.

53. Most NGOs agreed upon the recognition of the principle of hierarchy of human rights above other fields of international law, particularly commercial rules. Some NGOs considered that an instrument should address relevant principles of human rights, such as the primary responsibility of States, the obligation to protect and guarantee human rights, the domestic and extraterritorial responsibility of businesses, the application of the precautionary principles and the principle of international cooperation.

54. Many NGOs highlighted that the protection of human rights defenders and the creation of a safe and enabling environment for their work should be a key principle at the core of the instrument. Likewise, they were of the view that the working group process must guarantee the full and safe participation of human rights defenders through practical mechanisms, the interspersing of NGO statements with those of other actors, a continued openness to the participation and webcasting of entities from outside the Economic and Social Council, national and regional consultations prior to sessions, and an institutional mechanism to prevent and respond to reprisals against defenders for seeking to engage with the process.

C. Panel III. Coverage of the instrument: transnational corporations and other business enterprises — concepts and legal nature in international law

55. One panellist noted that, from a macroeconomic viewpoint, the size of corporations did matter, that half of the 100 leading economies were transnational corporations and that one quarter to one third of all economies were companies. There had been a fundamental shift in the balance of power between such corporations and States, driven in particular by core factors such as the rise of new technologies that facilitate management of companies across borders and the deregulation of many economic activities. The panellist also stressed that the extent of control that these companies can exert on States, civil society, employees and international organizations was a key element to consider. Finally, the panellist mentioned that, currently, there was an absence of countervailing power to channel the corporate space of influence.

56. One panellist noted that traditional international law scholars had argued that international law was only applicable between States, but that there were many examples throughout history where non-State actors had been subject to international law, such as the Modern Slavery Act of the United Kingdom of Great Britain and Northern Ireland, where the law was applied throughout the supply chain of corporations with the aim of stamping out slavery.

57. One panellist noted the need to define the objective of the instrument, on the assumption that the footnote in resolution 26/9 suggested that the instrument should aim to address situations where transnational corporations and other entities with transnational activities were capable of evading their human rights responsibilities on jurisdictional grounds. On the contrary, it would be virtually impossible to cover and control domestic enterprises in the fulfilment of human rights, owing to the huge number of such enterprises and because they would be subject to domestic systems. Furthermore, the panellist referred to the issue of definition and argued that there were examples of international agreements that did not include specific definitions. Some approaches for defining of the term

"transnational corporations" could be through jurisprudence, delegation to national legislation or an intermediate referral system. Finally, the panellist stated that there were a number of precedents in other areas of law that address the control of subsidiaries and indirect control, for example, tax law, commercial law and intellectual property law.

58. Some States pointed out that the nature of the operations of transnational enterprises, their size and their corporate structure had an impact on human rights. Other States stressed that the instrument should focus mainly on gaps to address human rights impacts of transnational operations, as there was no clear definition of the term "transnational corporations".

59. Several States highlighted that the instrument should focus on transnational corporations because they can evade responsibilities for the extraterritoriality dimensions of their operations. Another State noted that there had been no significant discussions over the past decade regarding international liability for such corporations and that victims of their activities were already waiting for redress. It also warned against having a fixed definition because of the risk that a lack of agreement on definitions would entail. Likewise, it pointed out that it was possible to reach common understanding and mentioned examples of different instruments that did not use specific definitions when defining terms such as investment.

60. Several NGOs stressed the need for a treaty to focus on transnational corporations because there was a clear gap with respect to their operations in international human rights law.

61. Some NGOs argued that all enterprises were susceptible of committing human rights violations and that all victims needed protection and remedy regardless of the nature of the enterprise committing the abuse, so a treaty must therefore cover all business enterprises. They called for a treaty to address all businesses while focusing on the particular challenges posed by transnational corporations.

D. Panel IV. Human rights to be covered under the instrument with respect to activities of transnational corporations and other business enterprises

62. Several participants noted that the activities of transnational corporations could affect a wide array of human rights. They argued that there was no definition of grave violations of human rights in international law. Therefore it would not be accurate to limit a treaty to gross human rights violations, as it would signal that other violations are tolerated or considered less serious. They also stressed that current rules were not sufficient and that there was a need for an international response with extraterritorial competences. Some States and panellists noted that all human rights were universal, indivisible and interdependent as recognized in the Vienna Declaration and Programme of Action. One panellist highlighted that human rights violations had a special dimension linked to poverty, the rights of the child and gender.

63. Several panellists, delegations and NGOs noted that all human rights should be included in the binding instrument, since transnational activities had an impact on a wide range of stakeholders, including the communities in which they operate. They argued for the need to use an adequate methodology to identify corporate responsibility, such as a test to identify the responsibility of a corporation when it violates a right or directly benefits from the abuse of the right, and to identify the nature of the right and what it entails. From this point of view, the emphasis relies on the victim's rights, not on the agent of the conduct.

64. One panellist stated that a binding instrument must speak to the reality of poverty and noted that almost all instances of violations happened in impoverished contexts. The panellist argued that corporations should not exacerbate or benefit from sustaining levels of poverty. Finally the panellist argued that gender roles and norms had a discriminatory impact and that the binding instrument must be written from a gender perspective to ensure its effectiveness.

65. A number of States and NGOs reaffirmed that the scope of the instrument should start with and include the core human rights instruments of the United Nations, especially those concerning the rights of vulnerable groups, such as children, indigenous peoples and people with disabilities. In this sense, States, NGOs and panellists signalled that a limitation on the scope of rights would be counterproductive to the objectives of the instrument.

66. A number of States noted that a legally binding instrument must make transnational corporations legally liable for human rights violations and fundamental freedoms and define the role and responsibilities of non-State actors to uphold human rights in their activities. They underlined that such corporations had operated for years under soft law, which had enabled them to violate human rights. One State mentioned that there was a need to strike a balance between individual and collective rights, to uphold the right to development and the right to peace.

E. Panel V. Obligations of States to guarantee the respect for human rights by transnational corporations and other business enterprises, including extraterritorial obligation

67. The panellists and some NGOs agreed that there were gaps concerning the extraterritorial obligations of States to respect, protect and fulfil human rights obligations with regard to transnational corporations and other business enterprises, particularly on jurisdiction. Some panellists agreed that States should be responsible for indirect human rights abuses or for failing to act to curb private actions that violate human rights obligations.

68. Some panellists also noted that due diligence obligations entail States' extraterritorial obligations with respect to their transnational corporations operating abroad. Some panellists recommended abolishing *forum non conveniens* in order to ensure accountability for such corporations. Some panellists and several NGOs mentioned the need to ensure an adequate forum to address claims by victims and provide access to justice and redress.

69. One panellist noted that national legislation and jurisdiction were not enough to address human rights abuses by transnational corporations, and that provisions of international law need to deal with the issue in addition to strengthening domestic law. States should establish a stable and predictable legal framework through well-defined laws to promote the enjoyment of human rights, including awareness-raising and dissemination in the corporate world. One panellist argued that extraterritoriality should be applied by way of ensuring that violations committed by such corporations are dealt with pursuant to the law of the country in which they are based and operate.

70. One panellist noted that there were existing human rights obligations for States in the business realm within the treaty bodies and Guiding Principles, but that gaps existed and needed to be addressed through international cooperation. In particular, victims of human rights abuses should be able to bring cases in the home State of transnational corporations. The panellist considered that discussions should include whether the instrument would outline remedies available if States did not act on obligations, or whether it would address jurisdiction and define liability of corporations, or both. Likewise, a

prospective instrument should clarify the existing obligations of States and fill gaps that cannot be covered under domestic legal systems. The State would carry the same obligations towards all businesses, but the prospective instrument would be an additional means to ensure that corporations cannot manoeuvre States' domestic jurisdiction to avoid liability.

71. One panellist noted that the conclusion drawn from the Guiding Principles had been heavily criticized for not addressing jurisdictional limitations in order to enable extraterritorial application, and that there were various options for operationalizing extraterritorial obligations in order to close legal gaps. Specifically, the panellist noted that extraterritorial obligations could be operationalized by creating prevention, disclosure and reporting requirements, removing obstacles to the exercise of jurisdiction, such as *forum non conveniens*, facilitating cross-border cooperation in investigations and mutually recognizing national judgements. The panellist went on to say that, in operationalizing extraterritorial obligations, the issue of scope did not arise and that there was no need to define "transnational corporation" when there was a positive human rights obligation regarding the duty to protect. The panellist specified that corporate activities could undermine, among many others, the rights to self-determination and to a healthy environment. The panellist noted that a global partnership to fight impunity could address the imbalances, close the gaps and strengthen the capabilities of States in international law; in this sense, the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights are a useful guide.

72. One panellist noted that, in general, criminal sanctions were inadequately enforced in home States and adequate civil legal representation was not available. The panellist stressed that there was a need to address corporate veil and allow disclosure and access to documentation in order to combat impunity. Specifically, there were significant deficiencies in gaining access to remedies, even in the home States of corporations, and extraterritorial jurisdiction may raise issues of sovereignty of host States. The panellist also noted that many civil codes had clauses that could attribute liability under a tort-based approach — where a legal duty of care is owed by a company —, which could be useful.

73. A number of States highlighted the need to take into account the sovereignty of States and address only impunity. Unilateral coercive sanctions imposed by States violate and jeopardize human rights. Some delegations noted the need to balance the rights of investors with ensuring human rights. One delegation noted that States could promote human rights by requiring transnational corporations to report on how they address violations and making sure legal systems include complaint mechanisms for issues arising outside their territory. One delegation also noted the importance of ensuring access to remedies for victims.

74. One State asked the panellist whether States should provide an appropriate forum under the private law principle of *forum necessitatis*. In response, some of the panellists noted that private international law had limits and that the principle of forum of necessity seemed unrealistic and very ambitious. Likewise, other panellist noted that an international system for the protection of human rights could not replace national legal systems and that host and home States must ensure the existence of legal remedies for victims.

75. One business representative stressed the shortcomings of extraterritorial jurisdiction and emphasized that access to remedy should be made at the local level. He called for stronger commitments by Governments to deliver on their duty under international law to provide access to remedy and suggested that the working group should elaborate on ways of increasing pressure on Governments to become more active and improve their judicial systems by more strongly monitoring the judicial performance within the United Nations supervisory machinery.

76. Some NGOs recommended that States pass laws that require due diligence to make mandatory the implementation of human rights, and pointed out that better access to remedy was a prerequisite for human rights protection.

77. Some NGOs underlined the need for States to make and implement laws that guarantee the free, prior and informed consent of communities. A number of NGOs recalled that the State duty to protect applies both to home and host States, and that States should provide adequate and accessible forums to pursue appropriate remedy and clarify under law the nature and scope of business conduct that would give rise to legal liability.

F. Panel VI. Enhancing the responsibility of transnational corporations and other business enterprises to respect human rights, including prevention, mitigation and remediation

78. One panellist examined the language of responsibility, the integration of human rights standards and the scope of free, prior and informed consent. The panellist noted that language should distinguish between duty, which is obligatory, and responsibility, which is voluntary. As such, corporate social responsibility is voluntary and based on a selective set of projects that are usually charitable in nature. It is distinct from compliance with international human rights law, as the later does not allow to pick and choose which rights to comply with. The "pick-and-choose" approach means that corporations could simultaneously commit violations while developing corporate social responsibility projects. Second, the panellist noted that going beyond corporate social responsibility requires integrating human rights standards into the entire corporate structure, both internally and externally. Finally, the panellist noted that free, prior and informed consent practices tend to have flaws in timing and methodology and tend to have superficial objectives. The panellist noted that, to address these deficiencies, the views and decisions of the community should be taken into account and an equal relationship should be established to ensure effective bargaining. The panellist emphasized that victims should have a say with regard to what kind of remedies are available to them.

79. One panellist noted that the working group should build on the second pillar of the Guiding Principles but not blindly copy all its content; while both processes are complementary, it is important to recognize the limitations of the principles and try to fill in the gaps. Otherwise, the treaty could be an additional instrument that suffers from the limitations of the Guiding Principles. The panellist further noted that responsibility under international human rights law entails legal accountability and legal duty. However, the term "responsibility", as used for the second pillar of the Guiding Principles, does not reflect this understanding. The panellist stated that, if used as part of a treaty, it is important to clarify that term, and to provide a definition that differentiates it from how it was used under the Guiding Principles. The panellist considered that, although non-judicial mechanisms were important, there was a need for robust judicial mechanisms. Furthermore, the panellist noted that the argument of the primary responsibility of States should not hide the fact that companies had independent responsibilities. The panellist stressed the need for affordable and timely redress to overcome obstacles in access to justice and possibly for a relief fund for victims. Companies could contribute to such a fund at either the national level or the regional level, on the basis of a proportion of their annual turnover.

80. One panellist considered that the ILO Declaration on Fundamental Principles and Rights at Work, its Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), and other ILO conventions, embody direct obligations for States to support business in carrying out meaningful due diligence and ensuring that their operations fully respect human rights. The panellist further noted that, even if States did not fulfil their primary responsibility to protect human rights, corporations had autonomous obligations that are independent and

complementary, and the two should not be confused. The panellist also noted that the ILO instruments could provide guidance in this respect. Specifically, the panellist mentioned the various ILO conventions on employment at sea as an example of a treaty that includes a clear indication of shipowners' liability and refers directly to private shipowners' obligations. Finally, the panellist noted that, while some speakers focused on the role of the home State in ensuring that companies within their jurisdiction complied with due diligence, there were instruments that refer to companies' international liability.

81. One panellist noted that stakeholder surveys in the business sector showed that respect for human rights had become an issue of concern for the business community and that business people today believed that human rights were relevant to their work and should be part of a business strategy. The panellist further noted that the Guiding Principles had already had a major impact and support on the business sector and should continue to be supported. The panellist stressed that all businesses, including small and medium-sized enterprises, should protect human rights. Specifically, the panellist noted that multinational companies competed locally for business and faced the challenge of competition with the unorganized and informal markets. The panellist added that it was critically important to enable host States to cast their net more broadly and minimize the informal economy, that all companies must abide by the laws of the States where they operate ("host States") and that the most valuable work was to equip host States to meet their responsibilities to protect human rights.

82. One business representative stressed the importance of national action plans as a powerful tool to identify gaps and create an enabling environment for business and human rights. He also referred to the ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), which requires Governments to support companies in their due diligence. This supportive approach could guide the work of the working group, which should elaborate on ways on establishing an easy accessible support structure for companies similar to the ILO multinational enterprises helpdesk.

83. Most delegations underlined that a future instrument should clearly set out the direct obligations of corporations to respect human rights. One delegation pointed out that, while the primary responsibility of States was to protect human rights by means of legislative and judicial measures, the responsibility of corporations to respect human rights entailed a direct obligation to prevent, mitigate and redress the human rights abuses caused by their operations. Another State noted that many enterprises had managed to bypass the duty to respect human rights, despite the fact that, under national legislation, all individuals must respect human rights. One delegation noted that transnational corporations and other business enterprises could have different legal status in different countries, so there was a need to clarify definitions, particularly regarding obligations.

84. Another State noted that transparency and public access to information were necessary to ensure proper oversight of actions. One State pointed out that the instrument should establish the liability and accountability of enterprises under human rights and humanitarian law. Another State noted that the risks of corporate complicity in human rights abuses committed by other actors increased in conflict-affected areas. It went on to raise concerns about businesses that supported or profited from the internationally unlawful conduct of a States, in particular in contexts of occupation. In that regard, it was of vital for the legally binding instrument to prevent and address the heightened risk of business involvement in abuses in conflict situations, including situations of foreign occupation. Due consideration should be given to the principles of international humanitarian law and the right to self-determination, including permanent sovereignty over natural resources, particularly in conflict zones. Finally, one delegation noted that the future international instrument should consider situations of inadequate compensation and include both foreign and local enterprises.

85. Various NGOs highlighted the importance of adopting legislation to prevent negative human rights impacts and establish mechanisms for human rights due diligence, including prevention, mitigation and redress for any such negative impacts that a private business enterprise may cause or contribute to through its own activities or through business relationships directly linked to its operations, products or services. Various NGOs recommended that States adopt policy and regulatory measures to ensure that companies are required to conduct human rights due diligence when operating at home or abroad, including through their business relationships and throughout their supply chains. Parent companies should have a duty to ensure their subsidiaries' compliance. Particular attention should be paid to high-risk zones, including in conflict zones or occupied territories, in order to prevent companies from contributing to human rights violations.

86. Other NGOs noted that States should be required to establish legislation that defines appropriate criminal and civil liability in order to sanction companies that have caused or contributed to human rights abuses. Due diligence processes must involve meaningful consultations with those likely to be affected by corporate activities, including obtaining the free, prior and informed consent of indigenous peoples. Finally, most NGOs noted that the instrument could fill in the gaps of the Guiding Principles and stressed the need for the instrument to cover the obligation of transnational corporations to respect all human rights, including national and international norms on human rights, labour and the environment.

87. One delegation noted that entities with legal personality should be included in the instrument and asked whether the instrument could include mechanisms to ensure the enforcement of human rights. A panellist responded that human rights law obligations could be imposed on entities that were not international legal persons. In response to another delegation, a panellist noted that jurisdictions of host and home States could be considered to ensure that transnational corporations are held accountable. Other delegations noted the particular need to protect against human rights violations in conflict zones.

G. Panel VII. Legal liability of transnational corporations and other business enterprises: what standard for corporate legal liability and for what conduct?

88. One panellist noted that a number of principles should be kept in mind when establishing standards of legal liability, including: a focus on victims; a differentiation between various types of responsibilities, including criminal, civil and administrative; and the flexibility for States to apply standards in national systems. Achieving legal certainty in the use of these standards could make it possible to avoid frivolous litigation and facilitate mutual assistance and cooperation among States. The panellist also noted that parent companies should be held accountable not only for their own conduct, but also for the conduct of their subsidiaries and supply-chain partners. Moreover, the panellist highlighted that corporations' direct due diligence efforts were not enough and that corporate culture needed to change, including existing approaches to piercing the "corporate veil". For the panellist, the parent company should be accountable as a matter of principle and would have to prove the opposite.

89. Another panellist noted the necessity to determine, from a victim-centred, problem-solving and pragmatic approach, which types of conduct would be considered violations under a legally binding instrument. The panellist also noted that the due diligence approach was essential as it went far beyond national or international liability and dealt with the expectations of society, which have much more serious economic impacts than a long legal process. The panellist furthermore stressed that victims of gross human rights abuses needed a jurisdictional forum, which can be achieved through an injection of financial and non-financial resources at the domestic level.

90. For one panellist, the existence of legal responsibility presupposes the existence of wrongful conduct in contravention of an obligation. Likewise, harmful conduct could happen inside or outside national territory, and it was therefore not necessary to define whether a company was transnational or not. The panellist argued that sanctions could be criminal, civil or administrative, and recalled that human rights violations should be tackled under public, not private, law. The panellist also highlighted that the instrument should incorporate the obligation of States to clearly define and incorporate in national criminal law those forms of harmful conduct against human rights, including those already recognized under international law. In addition, the instrument should include sanctions for human rights abuses that were not defined as criminal acts, as well as standards of complicity or conspiracy and the explicit recognition of the legal responsibility of a company as a legal person, not excluding the individual legal responsibility of directors and managers.

91. The final panellist analysed the implications of international trade and investment agreements on State policies to comply with human rights obligations. It was noted that, in several cases, transnational corporations had effectively used investment treaties or investment chapters of trade agreements to bring claims against host States for actions taken to protect human rights or comply with national legislation. These cases had resulted in Governments having to pay large compensation to such corporations. Likewise, the disadvantage of States in investor-State dispute settlement procedures was also evident with respect to the payment of legal fees. If companies win a case, their legal fees should be covered by the State, but typically the latter is not compensated if the award is in its favour. Often, foreign investors do not have to pay legal fees at all. The panellist also highlighted the hurdles that victims face to effectively sue transnational corporations.

92. One delegation noted that a list of harmful conducts and violations recognized in international law could be included in a treaty and should be linked to the domestic law of States. The delegation furthermore noted that the working group needed to look at how an effective instrument could (a) correspond to instruments that protect the rights of investors, (b) address the legal loopholes that corporations exploit in order to escape liability from harmful conduct and (c) ensure victims' access to remedy. One delegation asked whether the legally binding instrument fully covered corporate social responsibility and human rights, and how to limit impunity, for example, by withdrawing contracts.

93. Another delegation enquired about measures to protect the host country, because of the imbalance of protections offered to investors under treaties, often allowing them to avoid sanctions. Several States noted that the instrument should cover the responsibility of the enterprise, including the acts of its subsidiaries and suppliers, its licenses and others levels of the corporate structure, and should clearly determine certain types of conduct.

94. One delegation noted that the footnote in resolution 26/9 was legitimate and justifiable. Local businesses must be registered and must comply with national legislation. In addition, the delegation remarked that the purpose of the working group was to regulate the activities of transnational corporations under international human rights law. Likewise, it stressed the need for uniform human rights standards in the global operations of transnational corporations in order to ensure effective remedies for victims, including mechanisms for proper litigation and remediation. The State also recalled that the footnote did not exclude the fact that States were encouraged to enhance human rights standards in their national legislation.

95. One NGO asked whether a treaty should be extended to financial institutions. Another NGO noted the need to establish a new list of standards to fill the gap that allows transnational corporations to avoid their responsibilities to prevent human right abuses. Several NGOs recognized the need to clarify the criminal liability of legal entities and to include mechanisms for coordination among different jurisdictions. Finally, a group of

NGOs called for clarifying and affirming the liability of companies, including private military corporations for violations they have committed, even if hired by States or by the United Nations, which should neither shield their liability nor limit access to remedy for victims.

96. Several NGOs noted that a treaty should specify the ways in which transnational corporations and other business enterprises participate in committing human rights abuses, including corporate complicity and parent company responsibility for the offences committed by its subsidiaries, suppliers, licensees and subcontractors. Corporate legal responsibility should not exclude the legal responsibility of company directors or managers.

97. In response to questions, one panellist noted that a treaty could declare in its preamble that human rights enjoy normative supremacy and that such an instrument could include a section requiring States to include human rights labour and environmental standards in bilateral investment treaties. One panellist noted the need for convergence with the outcomes of the OHCHR accountability and remedy project. Another panellist recalled that not all States had ratified all instruments and not all human rights were recognized in all jurisdictions. It was therefore argued that it would be better for a treaty to avoid establishing a uniform standard of corporate responsibility.

H. Panel VIII. Building national and international mechanisms for access to remedy, including international judicial cooperation, with respect to human rights violations by transnational corporations and other business enterprises. – OHCHR accountability and remedy project

98. The panel discussion focused on the need for greater access to effective judicial and non-judicial remedy for victims of business-related human rights abuses. It was advocated that there was a need for an international legally binding instrument to complement existing national, regional and international efforts, and that such an instrument should ensure the full scope of remedies and generate clear mechanisms for redress.

99. One panellist provided details of the OHCHR accountability and remedy project, which aims to provide conceptual, normative and practical clarification of key issues and to enhance accountability and access to remedy in cases of business involvement in serious human rights abuses. A key objective would be to use the information collected and evaluated to inform "good practice guidance".

100. Another panellist focused on the barriers to civil litigation. It was argued that the key legal hurdle in home State cases was jurisdiction and asserting the liability of the parent company. Another hurdle was corporate complicity in human rights violations perpetrated by the State. Procedural hurdles also included access to documents and the availability of class action procedures, but the overriding practical hurdle was the availability of funding for legal representation.

101. One panellist focused on the role and potential of national human rights institutions that are exploring new modalities and protocols for cross-border cooperation to secure remedy for abuses resulting from transnational business activities. It was highlighted that the value added and effectiveness of a binding instrument would depend on its ability to complement existing national, regional and international efforts in the field of business and human rights.

102. Another panellist said that current legal remedies remained elusive and more uniform standards were needed. A treaty was required because, while necessary, national systems for remedy were not sufficient. Likewise, an effective remedy would be one that included not only pecuniary measures, but also injunctive relief and apology. It was

proposed that any treaty should take a comprehensive jurisdictional approach and an evidence- and reality-based approach. It was also mentioned that cooperation with regard to international legal aid should be fostered, in the form of establishing a fund to provide victims with adequate legal representation.

103. Some delegations stressed that access to justice was one of the fundamental aspects for States and at the same time it was one of the clear gaps in cases of impunity for human rights violations perpetrated by corporations. One delegate described the present system of domestic law remedies as patchy, unpredictable and ineffective. Another delegate recalled the need for a treaty to establish mechanisms to allow natural persons whose human rights had been violated to have binding redress. Several delegates suggested that a convergence of approaches might be helpful and called for collaboration, capacity-building and mutual assistance on due diligence investigations, administration of justice and enforcement of judgements. Likewise, variations between the economic and development conditions of States, their histories and cultural characteristics must be taken into account. While the duty of States to protect human rights was universally accepted, it should be complemented by a comprehensive and balanced manner of addressing the obligations of transnational corporations and other business enterprises with respect to human rights.

104. Several delegates underlined the need for a future instrument to be accompanied by a robust monitoring and enforcement mechanism for legal and judicial redress, as well as rules for applying sanctions in order to avoid impunity. If such a mechanism was established, it must provide adequate legal representation for victims. Numerous delegates submitted that victims must be at the centre of the discussions and the instrument should include provisions to ensure access to justice by affected communities in home and host States.

105. Some NGOs advocated for a treaty that provided access to justice and effective remedy mechanisms, including administrative, non-judicial and judicial remedies. The lack of remedy mechanisms in the home State of the corporation was recognized as a barrier for access to justice, thus the principle of complementarity between the home and the host State jurisdiction should be included. A group of NGOs highlighted the need for a treaty to address legal and logistical barriers for access to justice, including jurisdictional limitations, corporate veil, impediments to disclosure of documents, restrictions of prescription, legal costs and limitation of class actions, among other factors. Others called for effective bodies of enforcement, such as a committee for compliance oversight or a public centre for control of transnational corporations. Finally, another group of NGOs called for a world court or tribunal that could receive claims, adjudicate and enforce judgements, and could operate in complementarity with national and regional instruments.

V. Recommendations of the Chair-Rapporteur and conclusions of the working group

A. Recommendations of the Chair-Rapporteur

106. **Following the discussions held during the first session of the working group, and acknowledging the different views and suggestions on the way forward, the Chair-Rapporteur makes the following recommendations:**

(a) **A second session of the working group should be held in 2016 according to the mandate of the working group established in Human Rights Council resolution 26/9;**

(b) Informal consultations with Governments, regional groups, intergovernmental organizations, United Nations mechanisms, civil society and other relevant stakeholders should be held by the Chair-Rapporteur before the second session of the working group;

(c) The Chair-Rapporteur should prepare a new programme of work on the basis of the discussions held during the first session of the working group and the informal consultations to be held, and should share that programme of work with the relevant stakeholders before the second session of the working group for consideration and further discussion thereat.

B. Conclusions

107. At the final meeting of its first session, on 10 July 2015, the working group adopted the following conclusions, in accordance with its mandate established by resolution 26/9:

(a) The Working Group welcomed the participation of the Deputy High Commissioner and the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, as well as a number of independent experts who took part in panel discussions, and took note of the inputs received from Governments, regional and political groups, intergovernmental organizations, civil society, NGOs and all other relevant stakeholders;

(b) The Working Group welcomed the recommendations of the Chair-Rapporteur and looks forward to the informal consultations ahead of and the new programme of work for its second session.

VI. Adoption of the report

108. At its ninth meeting, on 10 July 2015, the working group adopted *ad referendum* the draft report on its first session and decided to entrust the Chair-Rapporteur with its finalization and submission to the Human Rights Council for consideration at its thirty-first session.

Annex I

List of speakers for panel discussions

Monday, 6 July 2015

Keynote speaker

- Ms. Victoria Tauli-Corpuz

Panel I (15:00)

Implementation of the Guiding Principles on Business and Human Rights: A Renewed Commitment by All States: A Renewed Commitment by All States

- Michael Addo, Chair, Working Group on the issue of human rights and transnational corporations and other business enterprises

Panel II (cont. 15h00-18h00)

Principles for an International Legally Binding Instrument on Transnational Corporations (TNCs) and other Business Enterprises with respect to human rights

- Chip Pitts (Lecturer in Law, Stanford University Law School)
- Bonita Meyersfeld (Director of the Centre for Applied Legal Studies and an associate professor of law at the School of Law, University of Witwatersrand, Johannesburg)
- Professor Robert McCorquodale, Professor of International Law and Human Rights, University of Nottingham

Tuesday, 7 July 2015

Panel III (09h00-13h00)

Coverage of the Instrument: TNCs and other Business Enterprises: concepts and legal nature in International Law

- Stephanie Blankenburg (Head of Debt, Development and Finance, UNCTAD
- Michael Congiu (Shareholder, Littler Mendelson PLC)
- Chip Pitts (Professor of Law, Stanford University Law School)
- Carlos M. Correa (Special Advisor on Trade and Intellectual Property of the South Centre)

Panel IV (15h00-18h00)

Human rights to be covered under the Instrument with respect to activities of TNCs and other business enterprises

- Hatem Kotrane (Member of the Committee on the Rights of the Child)
- Bonita Meyersfeld (Director of the Centre for Applied Legal Studies and associate professor of law at the School of Law, University of Witwatersrand, Johannesburg)

- Isabel Ortiz (Director of the Social Protection Department, International Labour Organization)
- Surya Deva (Associate Professor at the School of Law of City University of Hong Kong)

Wednesday, 8 July 2015

Panel V (09h00-13h00)

Obligations of States to guarantee the Respect of Human Rights by TNCs and other business enterprises, including extraterritorial obligation

- Hatem Kotrane (Member of the Committee on the Rights of the Child)
- Kinda Mohamedieh (Associate Researcher, Trade for Development Programme, South Centre)
- Marcos Orellana (American University Washington College of Law)
- Richard Meeran (Partner, Leigh Day & Co.)

Panel VI (15h00-18h00)

Enhancing the responsibility of TNCs and other business enterprises to respect human rights, including prevention, mitigation and remediation

- Surya Deva (Associate Professor at the School of Law of City University of Hong Kong)
- Tom Mackall (Group Vice President, Global Labor Relations, Sodex)
- Bonita Meyersfeld (Director of the Centre for Applied Legal Studies and an associate professor of law at the School of Law, University of Witwatersrand, Johannesburg)
- Mrs. Karen Curtis (Chief of ILO Freedom of Association Branch)

Thursday, 9 July 2015

Panel VII (09h00-13h00)

Legal liability of TNCs and other business enterprises: What standard for corporate legal liability and for which conducts?

- Surya Deva (Associate Professor at the School of Law of City University of Hong Kong)
- Roberto Suarez, Deputy Secretary-General of the IOE
- Sanya Reid Smith (Legal advisor and senior researcher at Third World Network)
- Carlos Lopez (Head of the programme on Business and Human Rights, International Commission of Jurists)

Panel VIII (15h00-18h00)

Building National and international mechanisms for access to remedy, including international judicial cooperation, with respect to human rights violations by TNCs and other business enterprises. The OHCHR accountability and remedy project

- Chip Pitts (Lecturer in Law, Stanford University Law School)
- Lene Wendland (Adviser, Business & Human Rights, Research and Right to Development Division, OHCHR)
- Nabila Tbeur (Conseil National des Droits de l'Homme du Maroc, on behalf of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Working Group on Business and Human Rights)
- Richard Meeran (Partner, Leigh Day & Co.)

Annex II

Participation of non-governmental organizations

The following National Human Rights Institutions attended the Working Group: Conseil National des Droits de l'Homme du Royaume du Maroc, The Danish Institute for Human Rights and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).[ICC]

The following non-governmental organizations in consultative status with the Economic and Social Council were represented: American Association of Jurists, American Bar Association, Americans for Democracy and Human Rights in Bahrain (ADHRB), Amnesty International, Arab Commission for Human Rights (ACHR), Asian Forum for Human Rights and Development, BADIL Resource centre for Palestinian Residency and Refugee Rights, Caritas International, Centre for International Environmental Law (CIEL), Centre for Human Rights, Centre Europe-Tiers Monde (CETIM), Centro de Estudios Legales y Sociales (CELS), Colombian Commission of Jurists, Conectas Direitos Humanos, Coordinadora Andina de Organizaciones Indígenas (CAOI), Coopération Internationale pour le Développement et la Solidarité (CIDSE), Earthjustice, ECLT Foundation, ESCR-NET, FoodFirst Information and Action Network (FIAN), Franciscans International, Friends of the Earth International, Friends World Committee for Consultation, Gifa Geneva Infant Feeding Association, Global Education Opportunity Program (GEO), Global Labor Relations, Global Policy Forum, Institute for Policy Studies, International Baby Food Action Network, International Commission of Jurists, the International Federation for Human Rights (FIDH), International Federation of Social Workers, International Human Rights Association of American Minorities (IHRAAM), International Movement ATD Fourth World, International NGO Forum on Indonesian Development, International Service for Human Rights (ISHR), International Organisation of Employers (IOE), ISMUN, Lutheran World Federation, NGO Forum for Health, Peace Brigades International, Quaker United Nations Office, Society for International Development, the Centre for Research on Multinational Corporations (SOMO), Swiss Catholic Lenten Fund, Trade for Development Programme, Union of Arab Jurists, Virat International, Women's International League for Peace and Freedom (WILPF), and World Council of Churches.